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*Doyle Homes, Inc. v. Signature Group of
Livingston, Inc.*

61 N.Y.L. SCH. L. REV. 255 (2016–2017)

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With billions of dollars at stake, copyright disputes are among the most fiercely argued issues in the legal world.¹ A copyright is defined as “a monopoly of limited duration, created and wholly regulated by the legislature.”² Once applicants obtain a copyright, they own the exclusive right to distribute, copy, or publish their work, and to prohibit others from doing the same, without prior consent.³ Despite the breadth of issues that copyright law covers, there is a common misconception that its only purpose is to protect authors against those who would appropriate their work.⁴ In actuality, the framers of the Constitution stated that the purpose of copyright law “is to promote the public welfare by [encouraging] the advancement of knowledge.”⁵ Both Congress’s implementation of and the federal courts’ interpretations of the Copyright Act of 1976 (the “Act”) have furthered this purpose.⁶

The Act is at the center of these copyright disputes and has produced great debate.⁷ Part of the controversy stems from 17 U.S.C. § 411(a),⁸ and the two differing approaches that courts have developed for determining when a work is registered: (1) the registration approach and (2) the application approach.⁹ Under the registration approach, an applicant’s work is not considered “registered” until the Copyright Office approves or denies the application.¹⁰ Alternatively, under the application

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1. *Copyright*, AM. LIBR. ASS’N, <http://www.ala.org/advocacy/copyright> (last visited Feb. 4, 2017).
 2. *Copyright*, BLACK’S LAW DICTIONARY (10th ed. 2014) (quoting EATON S. DRONE, A TREATISE ON THE LAW OF PROPERTY IN INTELLECTUAL PRODUCTIONS 2 (Bos., Little, Brown, & Co. 1879)); *see also Copyrightable Works*, USLEGAL, <http://copyright.uslegal.com/copyrightable-works> (last visited Feb. 4, 2017) (“For a work to be copyrightable, it must be an original idea that is put to use.”). Ideas, procedures, systems, concepts, and devices are not copyrightable. *Id.*
 3. U.S. COPYRIGHT OFFICE, COPYRIGHT BASICS 1 (2012), <http://www.copyright.gov/circs/circ01.pdf>.
 4. L. RAY PATTERSON & STANLEY W. LINDBERG, THE NATURE OF COPYRIGHT: A LAW OF USERS’ RIGHTS 1–2 (1991). Copyright disputes can involve magazines, movies, plays, music, television broadcasts, and computer programs. *Id.* at 1.
 5. *Id.* at 2.
 6. *See id.* *See generally* 17 U.S.C. §§ 101–513 (2012) (pertinent sections of the Act).
 7. *See La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195, 1201–05 (10th Cir. 2005) (explaining courts’ rationale for adopting either the registration or the application approach, and adopting the registration approach), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *see also* Thomas M. Landrigan, Note, *Application or Registration?: Confusion Regarding the Copyright Act’s Prerequisite to Copyright Infringement Lawsuits*, 44 IND. L. REV. 581, 581 (2011).
 8. 17 U.S.C. § 411(a).

Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.

Id. (footnote omitted).
 9. Landrigan, *supra* note 7, at 581.
 10. *Id.*; *see also La Resolana Architects*, 416 F.3d at 1201 (finding that the submission of an application alone does not satisfy the requirements set forth in 17 U.S.C. § 411(a)); *I’ve Submitted My Application, Fee, and Copy of My Work to the Copyright Office. Now What?*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/help/faq/faq-what.html> (last visited Feb. 4, 2017). The Copyright Office must determine whether

approach, an applicant's work is considered "registered" once the application and fees are filed with the Copyright Office.¹¹

In *Doyle Homes, Inc. v. Signature Group of Livingston, Inc.*, the issue before the U.S. District Court for the Eastern District of Michigan was whether the application or the registration approach should be applied to determine when a copyright is considered registered.¹² Had the court employed the application approach, the plaintiffs, Doyle Homes, Inc. and Jeffrey Doyle ("Doyle Homes"), likely would have been able to recover damages against the co-defendants, Kevin and Kelly Dyke (the "Dykes") and Signature Group, Inc. ("Signature Group"). However, the *Doyle Homes* court employed the registration approach.¹³ It held that Doyle Homes failed to satisfy the requirements set forth in 17 U.S.C. § 411(a) because the copyright registration was still pending, and granted the co-defendants' motions to dismiss.¹⁴

This case comment contends that the *Doyle Homes* court incorrectly employed the registration approach for three reasons. First, the court erred in holding that the statutory language of 17 U.S.C. § 411(a) was unambiguous and supported the registration approach.¹⁵ Second, the court placed inappropriate weight on another Sixth Circuit district court's decision without properly analyzing other circuits' holdings.¹⁶ Third, the court's textual analysis was deficient because its interpretation did not give effect to the purpose of the Act and congressional intent. The court's decision not only precluded Doyle Homes from enjoying the benefits of its work, but also overlooked the problems that result from employing the registration approach.

In October 2013, the Dykes asked Doyle Homes to modify a set of architectural plans owned by Doyle Homes, and to estimate the cost of constructing a house on the Dykes' property.¹⁷ Per the Dykes' request, Doyle Homes modified its plans for a fee of \$1,000.¹⁸ Later that month, the Dykes told Doyle Homes that they were "going in a different direction," and its services would no longer be needed.¹⁹ Less than a year later, in April 2014, the Dykes hired Signature Group to build their house.²⁰ Soon after, Doyle Homes discovered that Signature Group was using architectural

the material is copyrightable and meets all the legal and procedural requirements for registration before acting on an application. *See id.* It generally takes up to eight months to process an electronic application and up to fourteen months to process a paper application. *Id.*

11. *La Resolana Architects*, 416 F.3d at 1203; Landrigan, *supra* note 7, at 181.

12. 69 F. Supp. 3d 674, 677 (E.D. Mich. 2014).

13. *Id.* at 680.

14. *Id.*

15. *Id.*

16. *See id.*

17. *Id.* at 675.

18. *Id.*

19. *Id.* (citation omitted).

20. *Id.*

plans substantially similar to its plans to build the Dykes' house.²¹ Doyle Homes alleged that any changes Signature Group made to the plans were minimal and did not deviate from its original plans.²²

Doyle Homes initiated this action against the co-defendants, seeking damages and injunctive relief for violations of 17 U.S.C. §§ 106²³ and 501.²⁴ The Dykes and Signature Group filed separate rule 12(b)(6)²⁵ motions to dismiss Doyle Homes' claim.²⁶ Both motions alleged that Doyle Homes did not satisfy the requirements set forth in 17 U.S.C. § 411(a).²⁷ In response, Doyle Homes argued that it satisfied § 411(a)'s requirements because it applied for the copyright before commencing the suit, and that both the Dykes' and Signature Group's motions were untimely.²⁸

The U.S. District Court for the Eastern District of Michigan, applying the registration approach, held that Doyle Homes failed to satisfy the requirements set forth in 17 U.S.C. § 411(a) and granted both the Dykes' and Signature Group's motions to dismiss for failure to state a claim.²⁹ In the opinion, the court noted that the Sixth Circuit had not settled on the registration approach or the application approach, and acknowledged that a circuit split existed regarding which approach

21. *Id.*

22. *Id.*

23. Section 106 states:

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

17 U.S.C. § 106 (2012).

24. Section 501 states, in part: "Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a) . . . is an infringer of the copyright or right of the author, as the case may be." *Id.* § 501(a); see *Doyle Homes*, 69 F. Supp. 3d at 674.

25. FED. R. CIV. P. 12(b)(6) ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert . . . by motion: . . . (6) failure to state a claim upon which relief can be granted[.]").

26. *Doyle Homes*, 69 F. Supp. 3d at 674.

27. *Id.* at 675; see *supra* note 8.

28. *Doyle Homes*, 69 F. Supp. 3d at 675.

29. *Id.* at 680.

17 U.S.C. § 411(a) fosters.³⁰ The Tenth and Eleventh Circuits, relying on the plain language of the Act, have employed the registration approach.³¹ Conversely, the Fifth, Seventh, and Ninth Circuits have found ambiguity in the text and, relying on a policy-based interpretation of the Act, have employed the application approach.³²

Before beginning its analysis, the *Doyle Homes* court cited another Sixth Circuit district court's decision that employed the registration approach.³³ In *Hawaiian Village Computer, Inc. v. Print Management Partners, Inc.*, Judge Sean F. Cox opined, "the Sixth Circuit *would* favor the registration approach."³⁴ The *Doyle Homes* court apparently agreed with this view, by both quoting Judge Cox and citing the case underpinning the judge's statement.³⁵

The *Doyle Homes* court began its analysis by examining the statutory language of 17 U.S.C. § 411(a), holding that it is unambiguous and supports the registration approach.³⁶ The provision states:

Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.³⁷

Courts disagree as to what "registration" means and which approach it fosters.³⁸ In a Ninth Circuit decision, *Cosmetic Ideas, Inc. v. IAC/InterActiveCorp*, the court stated that 17 U.S.C. § 101 is not helpful in providing the clear meaning of "registration."³⁹

30. *Id.* at 677.

31. *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195, 1208 (10th Cir. 2005) (holding that a suit for copyright infringement cannot be brought until the copyright is registered with the Copyright Office), *abrogated on other grounds by* *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); *M.G.B. Homes, Inc. v. Ameron Homes, Inc.*, 903 F.2d 1486, 1489 (11th Cir. 1990) (holding that a copyright is not registered when applicants file their application with the Copyright Office).

32. *Cosmetic Ideas, Inc. v. IAC/InterActiveCorp*, 606 F.3d 612, 621 (9th Cir. 2010) (holding that receipt of an application by the Copyright Office satisfies the registration requirement of 17 U.S.C. § 411(a)); *Chi. Bd. of Educ. v. Substance, Inc.*, 354 F.3d 624, 631 (7th Cir. 2003) (holding that a copyright need not be registered with the Copyright Office, but instead merely filed with the Copyright Office to bring a suit for copyright infringement); *Apple Barrel Prods., Inc. v. Beard*, 730 F.2d 384, 386–87 (5th Cir. 1984) (holding that to bring a suit for copyright infringement, applicants only need to prove payment of the fee, deposit of the work in question, and receipt of the application by the Copyright Office).

33. *Doyle Homes*, 69 F. Supp. 3d at 677.

34. 501 F. Supp. 2d 951, 954 (E.D. Mich. 2007) (emphasis added).

35. *Doyle Homes*, 69 F. Supp. 3d at 677 (citing *Murray Hill Publ'ns, Inc. v. ABC Commc'ns, Inc.*, 264 F.3d 622, 630 (6th Cir. 2001) (holding that registration is a prerequisite to filing a suit for copyright infringement), *abrogated on other grounds by* *Reed Elsevier*, 559 U.S. 154).

36. *Doyle Homes*, 69 F. Supp. 3d at 677–78, 680.

37. 17 U.S.C. § 411(a) (2012) (footnote omitted).

38. *See Doyle Homes*, 69 F. Supp. 3d at 677.

39. 606 F.3d 612, 616 (9th Cir. 2010). Registration means "a registration of a claim in the original or the renewed and extended term of copyright." 17 U.S.C. § 101.

The court believed that “registration” did not have a consistent meaning in the Act because in some sections it meant “affirmative approval by the Copyright Office,” whereas in others it meant “completing the process of submitting an application.”⁴⁰ The *Doyle Homes* court did not address the statutory definition of “registration” and instead used *Webster’s Third New International Dictionary* to define the word.⁴¹ The court believed that the dictionary’s definition gave “registration” a clear and consistent meaning throughout the Act.⁴²

After defining “registration,” the *Doyle Homes* court concluded that nothing in 17 U.S.C. § 411(a) suggests that the filing of an application alone is sufficient to register a work.⁴³ The court elaborated on this point by explaining that the phrase, “deposit, application, and fee required for registration” would be redundant if “registration” was defined according to the application approach.⁴⁴ The court also stated that if an applicant’s delivery of the deposit, application, and fee satisfied the registration requirement, it would be impossible for the Copyright Office to refuse an application because registration already would have occurred.⁴⁵

Moreover, the *Doyle Homes* court stated that the Fifth, Seventh, and Ninth Circuit opinions did not give persuasive reasons for employing the application approach.⁴⁶ The court’s critique focused on the Ninth Circuit’s opinion because it made the strongest arguments in favor of the application approach.⁴⁷ The *Doyle Homes* court disagreed with the contentions made by the Ninth Circuit in *Cosmetics Ideas*,⁴⁸ and

40. *Cosmetic Ideas*, 606 F.3d at 618.

41. The court noted the following definitions of registration: “‘an act or the fact of registering,’ ‘something registered,’ and ‘an entry in a register.’” *Doyle Homes*, 69 F. Supp. 3d at 678 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1912 (1986)). *Doyle Homes* also noted that *Webster’s Third New International Dictionary* defines “register” as “‘to record formally and exactly’ and ‘to make or secure an official entry of in a register.’” *Id.* (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, *supra*, at 1912).

42. *Id.* at 678–79.

43. *Id.*

44. *Id.* at 679. The application approach would produce an inconsistent meaning in the statute because the term “registration” in the first sentence would have the same meaning as the phrase “deposit, application, and fee required for registration” in the second sentence. *Id.*

45. *Id.* The court concluded this despite a different court holding, only months earlier, that applicants may prove registration “by showing ‘payment of the required fee, deposit of the work in question, and receipt by the Copyright Office of a registration application.’” *Caner v. Autry*, 16 F. Supp. 3d 689, 707 (W.D. Va. 2014) (quoting *Apple Barrel Prods., Inc. v. Beard*, 730 F.2d 384, 386–87 (5th Cir. 1984)).

46. *Doyle Homes*, 69 F. Supp. 3d at 678.

47. *Id.* at 679–80; see *Cosmetic Ideas, Inc. v. IAC/InterActiveCorp*, 606 F.3d 612 (9th Cir. 2010) (analyzing the registration and the application approaches to determine Congress’s intent).

48. The *Cosmetic Ideas* court found the meaning of “registration” to be ambiguous because some sections of the Act seemed to support the registration approach, while others seemed to favor the application approach. 606 F.3d at 617–18. Consequently, the court turned to examine the history and purpose of the statute, and its context within the Act as a whole. *Id.*

stated that the requirements found in 17 U.S.C. § 408⁴⁹ do not support the application approach because it is unclear whether delivery of the deposit, application, and fee is meant to constitute registration.⁵⁰ Further, the *Doyle Homes* court found that under 17 U.S.C. § 410(a), a copyright is not registered until the Copyright Office examines the work and determines that it constitutes copyrightable subject matter.⁵¹ The court concluded its analysis by stating that the *Cosmetic Ideas* court also misinterpreted 17 U.S.C. § 410(d) because its statutory language should have been found to be unambiguous and squarely in support of the registration approach.⁵²

This case comment contends that the *Doyle Homes* court committed three errors by incorrectly interpreting 17 U.S.C. § 411(a) and employing the registration approach. First, the court erroneously concluded that the statutory language of 17 U.S.C. § 411(a) was unambiguous and supported the registration approach. In doing so, the court ignored the statutory definition in 17 U.S.C. § 101, and instead inappropriately relied on dictionary definitions.⁵³ Second, the court incorrectly garnered support from a hypothetical statement from another judge in the Eastern District of Michigan, who stated “the Sixth Circuit *would* favor the registration approach” if it were to address the issue, rather than utilizing applicable holdings from other Circuits.⁵⁴ Third, the court did not properly analyze the text of the Act because its interpretation did not give effect to the Act’s purpose and congressional intent. Further, the court’s reasoning precluded *Doyle Homes* from reaping the benefits of its work and overlooked the problems associated with employing the registration approach.

First, the *Doyle Homes* court incorrectly held that the statutory language of 17 U.S.C. § 411(a) was unambiguous and supported the registration approach.⁵⁵ When

49. Section 408 states, in part:

At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Such registration is not a condition of copyright protection.

17 U.S.C. § 408(a) (2012).

50. *Doyle Homes*, 69 F. Supp. 3d at 679–80.

51. *See id.* at 680.

52. *Id.* “The effective date of a copyright registration is the day on which an application, deposit, and fee, which are *later determined* by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.” *Id.* (quoting 17 U.S.C. § 410(d)). Whereas the *Cosmetic Ideas* court stated that the language in 17 U.S.C. § 410(d) was ambiguous and could be read as supporting either the registration or the application approach. 606 F.3d at 618.

53. *Doyle Homes*, 69 F. Supp. 3d at 678.

54. *Id.* at 677 (emphasis added).

55. *Id.* at 680.

interpreting a statute, a court must begin with the relevant text.⁵⁶ To determine whether the statutory language is ambiguous, courts should read the words in context and examine their place in the overall statutory scheme.⁵⁷ When a word is defined within a statute, courts should look to that definition to determine the meaning of the word.⁵⁸ If a word is not defined in the statute, or the definition is not helpful, the *noscitur a sociis* canon of construction directs courts to look at the surrounding words in the statute to ascertain the meaning of the word.⁵⁹

Here, the *Doyle Homes* court did not acknowledge the statutory definition, let alone use it for guidance in its analysis.⁶⁰ Instead, the court used *Webster's Third New International Dictionary* to define “registration.”⁶¹ According to 17 U.S.C. § 101, “registration” for the purpose of §§ 410(d) and 411 means “a registration of a claim in the original or the renewed and extended term of copyright.”⁶² While the Act’s definition does not clearly define “registration,” its meaning can arguably be ascertained from the words surrounding it.⁶³ In the statutory definition, the words “original” and “renewed,” used in concert with “registration,” show that “registration” aims to protect original or renewed works. The application approach aligns more closely with the statutory definition of “registration” because it affords applicants maximum protection for their original works.⁶⁴ The architectural plans should have been afforded protection under the Act because *Doyle Homes created* them.⁶⁵

56. See *King v. Burwell*, 135 S. Ct. 2480, 2483 (2015) (“If the statutory language is plain, the Court must enforce it according to its terms. . . . [W]hen deciding whether the language is plain, the Court must read the words ‘in their context and with a view to their place in the overall statutory scheme.’” (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000))).

57. *Id.* “The rule of *in pari materia*—like any canon of statutory construction—is a reflection of practical experience in the interpretation of statutes: a legislative body generally uses a particular word with a consistent meaning in a given context.” *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972); see also *Othi v. Holder*, 734 F.3d 259, 265 (4th Cir. 2013) (“To determine a statute’s plain meaning, we not only look to the language itself, but also the specific context in which that language is used, and the broader context of the statute as a whole.” (quoting *Country Vintner of N.C., LLC v. E. & J. Gallo Winery, Inc.*, 718 F.3d 249, 258 (4th Cir. 2013))).

58. See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

59. *Noscitur a sociis*, BLACK’S LAW DICTIONARY (10th ed. 2014).

60. See *Doyle Homes*, 69 F. Supp. 3d at 678.

61. *Id.* (noting that the word “registration” means “‘an act or the fact of registering,’ ‘something registered,’ and ‘an entry in a register’” (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, *supra* note 41, at 1912)).

62. 17 U.S.C. § 101 (2012).

63. See *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015) (stating that the meaning of some words may only become clear when placed in context).

64. The application approach protects applicants from the moment they file their application with the Copyright Office. *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195, 1203–04 (10th Cir. 2005), *abrogated on other grounds by* *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010). The registration approach does not protect applicants until the Copyright Office acts on their application. *Id.* at 1202–03. Therefore, because the application approach offers applicants protection sooner than the registration approach does, applicants receive the most protection under the application approach.

65. See *Doyle Homes*, 69 F. Supp. 3d at 675.

The court should have started with the statutory definition for “registration” in 17 U.S.C. § 101. Then, if the court deemed the statutory language to be ambiguous, it should have looked to other methods of interpretation for guidance. Failing to consider the statutory definition first was a critical mistake, because if the statutory definition was found to be unclear, then the court would need to examine the entirety of the Act for guidance.⁶⁶ Had the *Doyle Homes* court done this, it would have found that ambiguities exist throughout the Act regarding the meaning of “registration.”⁶⁷ For example, 17 U.S.C. § 408 states, “the owner of copyright . . . may obtain registration of the copyright claim by delivering to the Copyright Office the deposit . . . , together with the application and fee”⁶⁸ The statutory language implies that the sole requirement for obtaining “registration” is the delivery of the appropriate documents and fee. This meaning contradicts the one that the *Doyle Homes* court gave to “registration” under 17 U.S.C. § 411(a). The provision shows that the term “registration” does not have a clear and consistent meaning throughout the Act, and belies the court’s holding that the term “registration” is unambiguous.

In *Cosmetic Ideas*, the Ninth Circuit stated that 17 U.S.C. § 410(d) shows that the Act does not provide a clear definition for “registration” and does not clearly support either the registration approach or the application approach.⁶⁹ The provision states: “The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.”⁷⁰ Considering this language, because 17 U.S.C. § 410(d) dates a later-approved registration as the date of its application, the application, not the registration, is the critical event.⁷¹

That the important date is when the application is *received*, not when it is acted on, supports the application approach.⁷² Although the “backdating does not occur until after the Copyright Office or a court has deemed the registration acceptable,” it should not be read as supporting the registration approach because that would put the applicant at a disadvantage.⁷³ In some cases, the Copyright Office takes more than a year to process an application, which covers one-third of the entire statute of

66. YULE KIM, CONG. RESEARCH SERV., STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS 2–3 (2008).

67. See *Cosmetic Ideas, Inc. v. IAC/InterActiveCorp*, 606 F.3d 612, 617–18 (9th Cir. 2010).

68. 17 U.S.C. § 408(a) (2012).

69. *Cosmetic Ideas*, 606 F.3d at 618. “In particular, § 408 blurs the line between application and registration” *Id.* at 617.

70. 17 U.S.C. § 410(d).

71. *Cosmetic Ideas*, 606 F.3d at 618.

72. *Id.*

73. *Id.*

limitations period to bring a civil action for infringement.⁷⁴ The *Doyle Homes* court should not have discredited the Ninth Circuit's opinion for assigning "registration" different meanings within the Act because the *Doyle Homes* court failed to see that inconsistencies concerning "registration" already existed within the Act.⁷⁵

Second, the *Doyle Homes* court incorrectly garnered support from another Sixth Circuit district court decision, which opined that the Sixth Circuit would favor the registration approach, rather than utilizing applicable holdings from other circuits.⁷⁶ In *Hawaiian Village*, Judge Cox's statement, "the Sixth Circuit copyright law decisions *would* favor the registration approach,"⁷⁷ is dicta and legally no more than mere speculation. The *Hawaiian Village* court failed to analyze whether the Sixth Circuit's decisions would favor the registration approach.⁷⁸ Instead of doing its own analysis, the *Hawaiian Village* court relied on the *Murray Hill* decision.⁷⁹ Similarly, the *Murray Hill* court did not analyze the Sixth Circuit's copyright decisions and summarily stated, "[w]ith very limited exceptions not relevant here, registration is a prerequisite to filing a copyright infringement suit."⁸⁰ Neither court performed its own analysis to determine whether the Sixth Circuit's copyright decisions would favor the registration approach. Without analyzing whether the Sixth Circuit's case law does in fact support the registration approach, Judge Cox's statement, on which the *Doyle Homes* court relied, is meritless.

The *Doyle Homes* court inappropriately deferred to another district court's decision when it relied on Judge Cox's statement. Although *Hawaiian Village* was decided in the same circuit, *Doyle Homes* was not bound by Judge Cox's decision.⁸¹ A court must follow the authority of a higher court within its jurisdiction; conversely, the decision of a court from an equivalent or lower court in a court's jurisdiction, or a court in

74. See 17 U.S.C. § 507(b) ("No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued."). The amount of time it takes the Copyright Office to process an application can be even longer than one year depending on the "number of applications the [Copyright] Office is receiving and clearing at the time of submission and the extent of questions associated with the application." *I've Submitted My Application, Fee, and Copy of My Work to the Copyright Office. Now What?*, *supra* note 10.

75. Instead of addressing the inconsistencies in the Act, the court, using a dictionary definition, gave the word "registration" a uniform meaning throughout the Act. *Doyle Homes, Inc. v. Signature Grp. of Livingston, Inc.*, 69 F. Supp. 3d 674, 678 (E.D. Mich. 2014).

76. *Id.* at 677.

77. *Hawaiian Vill. Comput., Inc. v. Print Mgmt. Partners, Inc.*, 501 F. Supp. 2d 951, 954 (E.D. Mich. 2007) (emphasis added).

78. See generally *id.*

79. *Murray Hill Publ'ns, Inc. v. ABC Commc'ns, Inc.*, 264 F.3d 622 (6th Cir. 2001), *abrogated on other grounds by* *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010); see *Hawaiian Vill.*, 501 F. Supp. 2d at 954.

80. *Murray Hill*, 264 F.3d at 630.

81. See Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 NEV. L.J. 787, 800 (2012).

another jurisdiction, is merely persuasive.⁸² When an authority is persuasive, it does not bind a court, and the court can decide whether it will adhere to the authority.⁸³

Here, the district court's *Hawaiian Village* decision and the Ninth Circuit's *Cosmetic Ideas* decision were both merely persuasive. The *Doyle Homes* court should have deferred to a higher court's decision from a circuit that has settled on an approach, because higher courts are better equipped to handle more complex legal issues and interpretations.⁸⁴ Unlike district court cases, where one judge decides a case, a panel of three judges decides a circuit court case, providing an expertise that is more reliable.⁸⁵ For this reason, the *Doyle Homes* court erred in relying on a Sixth Circuit district court decision rather than relying on a circuit court decision.

Third, the court's interpretation of the Act did not give effect to the Act's purpose and Congress's intent.⁸⁶ The purpose of the Act "is to promote the public welfare by [encouraging] the advancement of knowledge."⁸⁷ The Act affords protection to "original works of authorship fixed in any tangible medium of expression."⁸⁸ The registration approach contradicts the purpose of the Act because it does not afford applicants maximum protection or support the advancement of knowledge. Under the registration approach, applicants are required to wait to have their works protected.⁸⁹ Conversely, the application approach furthers the purpose of the Act because it protects applicants by avoiding undue delay.⁹⁰

Congress likely did not intend for applicants to be taken advantage of under the Act and more likely intended for applicants to receive maximum protection. By employing the registration approach, the *Doyle Homes* court lengthened the waiting period for registration, which allowed Signature Group to take advantage of *Doyle Homes*' work.⁹¹ The court should have employed the application approach because it aligns more closely with Congress's intent and protects applicants' works from the moment their applications are filed with the Copyright Office.⁹² Applicants have no

82. Barbara Bintliff, *Mandatory v. Persuasive Cases*, 9 PERSP. 83, 83–84 (2001).

83. *See id.*

84. *See* *Salve Regina Coll. v. Russell*, 499 U.S. 225, 231–32 (1991); Mead, *supra* note 81, at 800, 815. The circuits that have settled on employing either the registration approach or the application approach are the Fifth, Seventh, Ninth, Tenth, and Eleventh Circuits. *Doyle Homes, Inc. v. Signature Grp. of Livingston, Inc.*, 69 F. Supp. 674, 677 (E.D. Mich. 2014).

85. *Salve Regina Coll.*, 499 U.S. at 232.

86. *See* *Cosmetic Ideas, Inc. v. IAC/InterActiveCorp*, 606 F.3d 612, 618–19 (9th Cir. 2010).

87. PATTERSON & LINDBERG, *supra* note 4, at 2 (discussing the intentions of the framers of the Constitution).

88. 17 U.S.C. § 102(a) (2012).

89. *Panoramic Stock Images, Ltd. v. John Wiley & Sons, Inc.*, 963 F. Supp. 2d 842, 849–50 (N.D. Ill. 2013).

90. *Id.* at 850.

91. *See* Matthew J. Astle, *Help! I've Been Infringed and I Can't Sue!: New Approaches to Copyright Registration*, 41 U. MEM. L. REV. 449, 482 (2011).

92. *Panoramic Stock Images*, 963 F. Supp. 2d at 850.

control over the speed at which the Copyright Office processes their applications. It is unfair for applicants' protections to be negatively affected by procedural delay.

The *Doyle Homes* decision has policy implications that go beyond its holding. The court missed the "bigger picture." Not only was Doyle Homes precluded from receiving the benefit of its work, but the decision also undervalued the problems that result from employing the registration approach. When the registration approach is employed, the registration process is substantially slowed for the applicant and a period of "legal limbo" is created.⁹³ The registration approach incentivizes bad behavior, as infringing parties may continue to profit from their wrongful acts while applicants are stuck waiting to have their works registered.

In contrast, the application approach avoids unnecessary delay in copyright infringement litigation.⁹⁴ During the registration process, it is inevitable that applications will be subject to the Copyright Office's scrutiny.⁹⁵ Because the Copyright Office approves over ninety-nine per cent of the applications it receives, it is burdensome to require applicants to wait for its approval to satisfy the requirements set forth in 17 U.S.C. § 411(a).⁹⁶ The wait is especially foolish since 17 U.S.C. § 411(a) provides that even if registration has been refused, "the applicant is entitled to institute a civil action for infringement."⁹⁷ Regardless of whether the Copyright Office accepts or denies the application, courts have the ability to second-guess any judgment that the Copyright Office makes.⁹⁸ In terms of efficiency, applicants should be able to sue for copyright infringement once they file their application with the Copyright Office.⁹⁹ The registration approach is inefficient and the several courts that have employed it have acknowledged as much.¹⁰⁰ The application approach better promotes the interests of justice and judicial economy.¹⁰¹

93. In this area of the law, legal limbo is a period when the applicant is awaiting action from the Copyright Office and cannot bring an infringement suit. See Astle, *supra* note 91, at 483–84; Landrigan, *supra* note 7, at 601–02.

94. *Panoramic Stock Images*, 963 F. Supp. 2d at 850.

95. James B. Astrachan, *The Inevitable Registration or Refusal Approach*, DAILY RECORD (Oct. 6, 2005), <http://thedailyrecord.com/2005/10/06/the-8216inevitable-registration-or-refusal8217-approach>.

96. Astle, *supra* note 91, at 486–87.

97. 17 U.S.C. § 411(a) (2012).

98. Astle, *supra* note 91, at 486–87.

99. *Id.* at 451–53.

100. *Id.* at 452; see *Specific Software Sols., LLC v. Inst. of Workcomp Advisors, LLC*, 615 F. Supp. 2d 708, 715–16 (M.D. Tenn. 2009) (stating that it is uneconomic to dismiss applicants' complaints because they do not have a certificate of registration), *abrogation recognized by Sony/ATV Music Publ'g LLC v. D.J. Miller Music Distribs., Inc.*, No. 3:09-cv-01098, 2010 WL 3872802 (M.D. Tenn. Sept. 28, 2010); *Brush Creek Media, Inc. v. Boujaklian*, No. C-02-3491 EDL, 2002 WL 1906620, at *4 (N.D. Cal. Aug. 19, 2002) (stating that it is inefficient to preclude an infringement suit because the application is pending), *rejected by Cosmetic Ideas, Inc. v. IAC/InterActiveCorp*, 606 F.3d 612 (9th Cir. 2010); *Ryan v. Carl Corp.*, No. C 97-3873 FMS, 1998 WL 320817, at *3 (N.D. Cal. July 15, 1998) (stating that employing the registration approach is inefficient and produces a "peculiar" result), *rejected by Cosmetic Ideas*, 606 F.3d 612.

101. *Tri-Mktg., Inc. v. Mainstream Mktg. Servs., Inc.*, No. 09-13 (DWF/RLE), 2009 WL 1408741, at *3 (D. Minn. May 19, 2009).

On a larger scale, employing the registration approach contradicts how section 63(a) of the *Restatement (Second) of Contracts* (“Mailbox Rule”) views acceptance.¹⁰² A longstanding goal of the courts has been to strive for efficiency and to produce consistent judgments.¹⁰³ If the *Doyle Homes* court had compared the registration approach to the Mailbox Rule, it would have found that a disconnect exists. Employing the registration approach prohibits applicants from suing for copyright infringement until the Copyright Office acts on their application.¹⁰⁴ Yet, under the Mailbox Rule, offerees’ acceptance is operative once it leaves their possession.¹⁰⁵ Although the Mailbox Rule is not binding on courts dealing with copyright issues, the registration approach runs counter to this longstanding principle and prolongs the period of infringement.¹⁰⁶ For consistency in the legal field, the application approach should be employed because it is more analogous to how acceptance is deemed operative under the Mailbox Rule.

The *Doyle Homes* court incorrectly employed the registration approach because it failed to acknowledge the ambiguity in 17 U.S.C. § 411(a), incorrectly relied on another Sixth Circuit district court’s decision without properly analyzing other circuits’ holdings, and misrepresented the purpose of the Act and Congress’s intent. Its decision should have provided assurances for applicants who take the necessary steps to safeguard their work. Instead, this decision adds another hoop for applicants to jump through to protect their work. When the registration process is prolonged, the life of the copyright infringer is made easier. The *Doyle Homes* decision encourages bad behavior and effects more than simply the outcome of this case. The court’s decision has set a dangerous precedent to follow, which will cause harm to a multitude of other applicants.

102. “Unless the offer provides otherwise, . . . an acceptance made in a manner and by a medium invited by an offer is operative and completes the manifestation of mutual assent as soon as put out of the offeree’s possession, without regard to whether it ever reaches the offeror” *RESTATEMENT (SECOND) OF CONTRACTS* § 63(a) (AM. LAW INST. 1981); see also Valerie Watnick, *The Electronic Formation of Contracts and the Common Law “Mailbox Rule,”* 56 *BAYLOR L. REV.* 175, 177 (2004) (noting that the common law rule that acceptance is effective when sent is known as the “mailbox rule”).

103. See generally RICHARD D. FREER, *CIVIL PROCEDURE* (3d ed. 2012) (noting that the adversary system of civil litigation is meant “to provide a fair, accurate, and efficient method of determining the likely facts and resolving disputes consistently, in accord with the law”).

104. *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195, 1202 (10th Cir. 2005), *abrogated on other grounds by* *Reed Elsevier v. Muchnick*, 559 U.S. 154 (2010). The registration approach delays the judicial process and causes copyright holders to wait longer than they would have to under the application approach. See *id.* at 1202–04.

105. See *supra* note 102.

106. *Oban US, LLC v. Nautilus, Inc.*, No. 3:13cv1076 (JBA), 2014 WL 2854539, at *6–7 (D. Conn. June 23, 2014).

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